

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

S. GARRETT COOK, JR.,
DON HALL,

Plaintiffs

v.

HESS CORPORATION;
CHEVRON USA, INC.;
CIRCLE K STORES, INC.;
CITGO PETROLEUM CORPORATION;
CONOCOPHILLIPS COMPANY;
COSTCO WHOLESALE CORPORATION;
EXXON MOBIL CORPORATION;
FLYING J, INC.;
MARATHON PETROLEUM COMPANY LLC;
MOTIVA ENTERPRISES, LLC;
MURPHY OIL USA, INC.;
PETRO STOPPING CENTERS, L.P.;
PILOT TRAVEL CENTERS LLC;
RACETRAC PETROLEUM, INC.;
SHELL OIL PRODUCTS COMPANY LLC;
SPEEDWAY SUPERAMERICA LLC;
SUNOCO, INC. R&M;
THE KROGER COMPANY;
THE PANTRY, INC.;
TOTAL PETROCHEMICALS USA, INC.;
VALERO MARKETING AND COMPANY;
WILCOHESS, LLC;
BP CORPORATION NORTH AMERICA, INC.,

Defendants.

CASE NO. 2:07-cv-750-WKW

**JOINT MOTION TO STAY PROCEEDINGS PENDING
TRANSFER TO THE U.S. DISTRICT COURT FOR THE
DISTRICT OF KANSAS FOR COORDINATED PRETRIAL PROCEEDINGS**

Plaintiffs S. Garrett Cook, Jr. and Don Hall and Defendant Costco Wholesale Corporation, by their respective attorneys, respectfully move the Court for an order staying this case pending its transfer to the U.S. District Court for the District Kansas for coordinated pretrial proceedings in *In re Motor Fuel Temperature Sales Practices Litigation*, MDL No. 1840.

This case is one of more than forty-five putative class actions that have been filed in district courts throughout the United States and that involve claims regarding the marketing of gasoline and diesel fuel at temperatures above 60 degrees Fahrenheit without adjustment for the fuel's temperature. Twelve of the early cases were the subject of a motion for consolidation for coordinated pretrial proceedings under 28 U.S.C. § 1407 that was filed with the Judicial Panel on Multidistrict Litigation ("MDL Panel"). On June 18, 2007, the MDL Panel granted the motion for consolidation, transferring the twelve early cases to the U.S. District Court for the District of Kansas. A true and correct copy of the MDL Panel's Transfer Order is attached hereto as Exhibit A. The remaining "tag-along" cases (of which this case is one) are, or soon will be, the subjects of Conditional Transfer Orders by the MDL Panel. See letter of August 27, 2007 notifying the MDL Panel of the status of this action as a potential tag-along action, attached hereto as Exhibit B.

The parties believe that an order, substantially in the form attached as Exhibit C, staying this case for a short time pending its transfer to the District of Kansas will serve the interests of judicial economy and efficiency and will avoid duplicative discovery and motion practice and the attendant risk of inconsistent orders or rulings.

By agreeing to the stay of proceedings in this case, Defendants do not waive any defenses, including the defense of lack of personal jurisdiction.

WHEREFORE, the parties respectfully request an order staying this case, including responsive due dates and all proceedings for all parties, until the transfer of this case to the District of Kansas for coordinated pretrial proceedings has been effected and the initial Scheduling Order has been entered by the transferee court in *In re Motor Fuel Temperature Sales Practices Litigation*, MDL No. 1840.

Dated: September 13, 2007

Respectfully Submitted,

By: /s/J. Paul Sizemore
J. Paul Sizemore
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Attorneys for Plaintiff

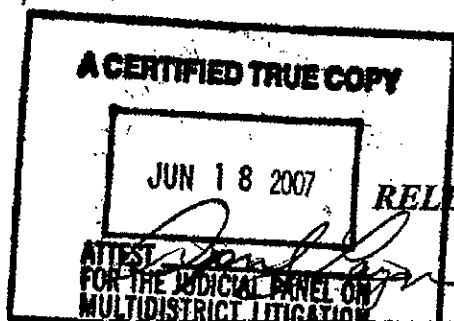
By: /s/James A. Byram, Jr.
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and

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Attorneys for Defendant
Costco Wholesale Corporation

EXHIBIT A



FILED
U.S. DISTRICT COURT
DISTRICT OF KANSAS

2007 JUN 22 PM 2:51

RELEASED FOR PUBLICATION

RALPH L. DELONG

DOCKET NO. 1840
AT KANSAS CITY, KS.

JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

JUN 18 2007

FILED
CLERK'S OFFICE

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE MOTOR FUEL TEMPERATURE SALES PRACTICES LITIGATION

BEFORE WM. TERRELL HODGES, CHAIRMAN, D. LOWELL JENSEN, J. FREDERICK MOTZ,* ROBERT L. MILLER, JR., KATHRYN H. VRATIL,* DAVID R. HANSEN AND ANTHONY J. SCIRICA, JUDGES OF THE PANEL

TRANSFER ORDER

This litigation presently consists of twelve actions listed on the attached Schedule A and pending in seven districts as follows: four actions in the Western District of Missouri; two actions each in the District of Kansas and the Western District of Oklahoma; and one action each in the Northern District of California, the Western District of Kentucky, the District of New Jersey and the Western District of Tennessee. Before the Panel is a motion, pursuant to 28 U.S.C. § 1407, brought by three oil company defendants¹ seeking centralization of these twelve putative class actions for coordinated or consolidated pretrial proceedings in the District of New Jersey.² Plaintiffs in all twelve actions and 21 potential tag-along actions as well as 36 of the more than 100 oil company, distributor or retailer defendants³ involved in the presently known actions agree that centralization is appropriate. Responding parties differ, however, regarding the most appropriate transferee district for this litigation and variously

* Judges Motz, Miller and Vratil took no part in the decision of this matter. In light of the fact that the other members of the Panel could be members of the putative class(es) in this litigation, each Panel member has filed with the Clerk of the Panel a formal renunciation of any claim that he or she might have as a putative class member thereby removing any basis for a disqualification on that ground. Alternatively, should it be determined for any reason that a disqualification survives the renunciation of any claim, the Panel invokes the Rule of Necessity to decide the matters now before it on the authority of, and for the reasons explained in, *In re Wireless Telephone Radio Frequency Emissions Products Liability Litigation*, 170 F.Supp.2d 1356, 1357-58 (J.P.M.L. 2001).

¹ Exxon Mobil Corp.; Amerada Hess Corp., n/k/a Hess Corp.; and Motiva Enterprises, LLC.

² The Panel has been notified that 25 potentially related actions are pending in multiple federal districts. In light of the Panel's disposition of this docket, these actions will be treated as potential tag-along actions. See Rules 7.4 and 7.5, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001).

³ Ambest, Inc.; BP Products North America, Inc., and BP Corp. North America Inc.; Casey's General Store's, Inc.; Chevron USA, Inc.; Circle K Stores Inc.; CITGO Petroleum Corp.; Coastal Mart of Oklahoma; ConocoPhillips and ConocoPhillips Co.; Flying J, Inc., and Kentucky Flying J, Inc., d/b/a Flying J, Inc.; The Kroger Co.; Kum & Go L.C.; Mini Mart, Inc., d/b/a Loaf N' Jug; Love's Travel Stops & Country Stores, Inc.; Marathon Petroleum Co. LLC and Marathon Oil Co.; MFA Oil Co.; Murphy Oil USA, Inc.; Petro Stopping Centers LP; Pilot Travel Centers LLC; Presto Convenience Stores, LLC; QuikTrip Corp.; RaceTrac Petroleum, Inc. (RaceTrac); Shell Oil Co. (Shell), and Shell Oil Products Co. LLC; Speedway Petroleum Corp.; Star Fuel Marts, Inc.; TA Operating LLC, successor by conversion to TA Operating Corp.; Tesoro Refining and Marketing Co.; Texaco, Inc.; Valero Marketing and Supply Co.; Wal-Mart Stores, Inc., and Sam's Club; and Wawa, Inc. (Wawa).

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support selection of the Northern District of California, the Southern District of Florida, the District of Kansas, the Western District of Missouri, the District of New Jersey, the Western District of Oklahoma or the Middle District of Tennessee as transferee district. Only two defendants – Sunoco, Inc., and Getty Petroleum Marketing, Inc. – oppose centralization. If the Panel deems centralization appropriate, these defendants support selection of the New Jersey district as transferee forum.

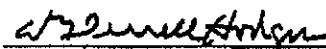
On the basis of the papers filed and hearing session held, the Panel finds that the actions in this litigation involve common questions of fact, and that centralization under Section 1407 in the District of Kansas will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. All MDL-1840 actions share factual allegations relating to the sale of motor fuel at temperatures greater than 60 degrees Fahrenheit. Centralization under Section 1407 is necessary in order to eliminate duplicative discovery; avoid inconsistent pretrial rulings, especially with respect to class certification; and conserve the resources of the parties, their counsel and the judiciary.

We are not persuaded by the arguments of the two opposing defendants that the lack of identity among the defendants in these actions warrants a different result. Indeed, transfer to a single district under Section 1407 has the salutary effect of placing all the related actions before a single judge who can formulate a pretrial program that: 1) allows pretrial proceedings with respect to any non-common issues to proceed concurrently with pretrial proceedings on common issues, *In re Multi-Piece Rim Products Liability Litigation*, 464 F.Supp. 969, 974 (J.P.M.L. 1979); and 2) ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties. We are confident in the transferee judge's ability to streamline pretrial proceedings in these actions, while concomitantly directing the appropriate resolution of all claims.

Given the geographic dispersal of constituent actions and potential tag-along actions, no district stands out as the geographic focal point for this nationwide docket. Thus, we have searched for a transferee judge with the time and experience to steer this litigation on a prudent course and sitting in a district with the capacity to handle this litigation. Accordingly, we select the District of Kansas – which is relatively conveniently located for many parties and witnesses – as transferee district for this litigation.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on the attached Schedule A and pending outside the District of Kansas are transferred to the District of Kansas and, with the consent of that court, assigned to the Honorable Kathryn H. Vratil for coordinated or consolidated pretrial proceedings with the actions pending there and listed on Schedule A.

FOR THE PANEL:


Wm. Terrell Hodges
Chairman

SCHEDULE A**MDL-1840 -- In re Motor Fuel Temperature Sales Practices Litigation****Northern District of California**

Mark Rushing, et al. v. Alon USA, Inc., et al., C.A. No. 3:06-7621

District of Kansas

Zachary Wilson, et al. v. Ampride, Inc., et al., C.A. No. 2:06-2582

American Fiber & Cabling LLC, et al. v. BP Corp. North America, Inc., et al.,
C.A. No. 2:07-2053

Western District of Kentucky

Keen Exploration, LLC, et al. v. Amoco Oil Co., et al., C.A. No. 5:07-14

Western District of Missouri

Victor VanDyne v. Murphy Oil USA, Inc., et al., C.A. No. 2:06-4302

Ditzfeld Transfer, Inc. v. Pilot Travel Centers, LLC, et al., C.A. No. 2:07-4025

James Vanderbilt v. BP Corp. North America, Inc., et al., C.A. No. 4:06-1052

Brent Donaldson, et al. v. BP Corp. North America, Inc., et al., C.A. No. 4:07-93

District of New Jersey

Richard Galauski, et al. v. Amerada Hess Corp., et al., C.A. No. 3:06-6005

Western District of Oklahoma

Craig Massey, et al. v. BP Corp. North America, Inc., et al., C.A. No. 5:07-102

Cynthia J. Cary, et al. v. BP Corp. North America, Inc., et al., C.A. No. 5:07-155

Western District of Tennessee

Diane Foster, et al. v. BP North America Petroleum, Inc., et al., C.A. No. 2:07-2059

EXHIBIT B

THELEN REID BROWN
RAYSMAN & STEINER LLP
ATTORNEYS AT LAW

A Qualitied Limited Liability Partnership

NEW YORK • SAN FRANCISCO • WASHINGTON DC • LOS ANGELES
SILICON VALLEY • HARTFORD • NORTHERN NEW JERSEY • SHANGHAI

Rachel Hollander
212.603.6781 Direct Dial
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August 27, 2007

VIA FEDEX AND FASCIMILE

Clerk of the Panel
Judicial Panel on Multidistrict Litigation
One Columbus Circle, N.E.
Room G-255, North Lobby
Washington, DC 20002-8004

Re: **In re Motor Fuel Temperature Sales Practices Litigation, MDL No. 1840**

Dear Honorable Clerk:

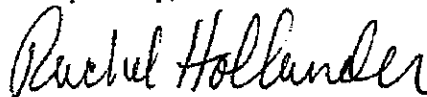
This firm represents Motiva Enterprises LLC, a party in the above-referenced litigation. I write to notify the Panel of the following recently commenced potential tag-along action:

<p>S. Garrett Cook, Jr. and Don Hall,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>Hess Corporation, Chevron USA, Inc., Circle K Stores, Inc., Citgo Petroleum Corporation, Conocophillips Company, Costco Wholesale Corporation, Exxon Mobil Corporation, Flying J, Inc., Marathon Petroleum Company LLC, Motiva Enterprises LLC, Murphy Oil USA, Inc., Petro Stopping Centers, LP, Pilot Travel Centers LLC, Racetrac Petroleum, Inc., Shell Oil Products Company LLC, Speedway SuperAmerica LLC, Sunoco, Inc. R&M, The Kroger Company, The Pantry, Inc., Total Petrochemicals USA, Inc., Valero Marketing & Company, Wilcohes, LLC, and BP Corporation North America, Inc.,</p> <p style="text-align: center;">Defendants.</p>	<p>Middle District of Alabama Montgomery Division</p> <p>Civil Action No. 07-750</p> <p>Judge William Keith Watkins</p>
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Clerk of the Panel
August 27, 2007
Page 2

A copy of the docket sheet and the complaint in the above action are attached.

Respectfully,

A handwritten signature in black ink that reads "Rachel Hollander". The signature is written in a cursive, flowing style.

Rachel Hollander

Attachments

cc: Attached list (via U.S. mail without attachments)

NY #1182785 v1

Printed on 03/05/2007

**Judicial Panel on Multidistrict Litigation - Panel Attorney Service List
for
MDL 1840 - In re Motor Fuel Temperature Sales Practices Litigation**

***** Report Key and Title Page *****

Please Note: This report is in alphabetical order by the last name of the attorney. A party may not be represented by more than one attorney. See Panel rule 5.2(c).

Party Representation Key

* Signifies that an appearance was made on behalf of the party by the representing attorney.
Specified party was dismissed in some, but not all, of the actions in which it was named as a party.
All counsel and parties no longer active in this litigation have been suppressed.

This Report is Based on the Following Data Filters

Docket: 1840 - Motor Fuel Temperature Sales Practices
For Open Cases

Judicial Panel on Multidistrict Litigation - Panel Attorney Service List

Page 1

Docket: 1240 - In re Motor Fuel Temperature Sales Practices Litigation

Status: Pending on 11

Transferee District:

Judge:

Printed on 03/03/2007

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=>
Coastal Mart of Oklahoma, Inc.; Coastal Mart, Inc.

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C/O Margaret Wilson
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=>
Costco Wholesale Corp.

Cruver, Donald B.
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Note: Please refer to the report title page for complete report scope and key.

(Panel Attorney Service List for MDL 1,340 Continued)

Page 2

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EZ Mart Stores, C/O Tom Cowden 1001 W. Memorial Road Oklahoma City, OK 73116	=> EZ Mart Stores, Inc.
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Horn, Robert A. Horn, Ayward & Bandy, LLC 2600 Grand Avenue Suite 500 Kansas City, MO 64108	=> Phone: (816) 421-9700 Fax: (816) 421-0699 Bob Soetens Trucking, LLC*; Soetens, Robert*; Vanderbush, James*; Wilson, Zachary*; Wonderland Miracle Carnival Co., Inc.*

Note: Please refer to the report title page for complete report scope and key.

(Panel Attorney Service List for MDL 1,840 Continued)

Page 3

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Note: Please refer to the report title page for complete report scope and key.

(Panel Attorney Service List for MDL 1,840 Continued)

Page 4

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Note: Please refer to the report title page for complete report scope and key.

(Prior Attorney Services List for MDL 1,840 Continued)

Page 5

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Note: Please refer to the report title page for complete report scope and key.

EXHIBIT C

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

S. GARRETT COOK, JR.,
DON HALL,

Plaintiffs

v.

HESS CORPORATION;
CHEVRON USA, INC.;
CIRCLE K STORES, INC.;
CITGO PETROLEUM CORPORATION;
CONOCOPHILLIPS COMPANY;
COSTCO WHOLESALE CORPORATION;
EXXON MOBIL CORPORATION;
FLYING J, INC.;
MARATHON PETROLEUM COMPANY LLC;
MOTIVA ENTERPRISES, LLC;
MURPHY OIL USA, INC.;
PETRO STOPPING CENTERS, L.P.;
PILOT TRAVEL CENTERS, L.P.;
PILOT TRAVEL CENTERS LLC;
RACETRAC PETROLEUM, INC.;
SHELL OIL PRODUCTS COMPANY LLC;
SPEEDWAY SUPERAMERICA LLC; SUNOCO,
INC. R&M;
THE KROGER COMPANY
THE PANTRY, INC.;
TOTAL PETROCHEMICALS USA, INC.;
VALERO MARKETING AND COMPANY;
WILCOHESS, LLC;
BP CORPORATION NORTH AMERICA, INC.,

Defendants.

CASE NO. 2:07-cv-750-WKW

ORDER STAYING PROCEEDINGS

Upon the parties' Joint Motion to Stay Proceedings Pending Transfer to the U.S. District Court for the District of Kansas for Coordinated Pretrial Proceedings, for good cause shown,

IT IS HEREBY ORDERED that further proceedings in this case are stayed until the transfer of this case to the District of Kansas for coordinated pretrial proceedings. Responsive due dates and all proceedings for all parties in this case are stayed until the transfer of this case to

the District of Kansas for coordinated pretrial proceedings has been effected and the initial Scheduling Order has been entered by the transferee Court in *In re Motor Fuel Temperature Sales Practices Litigation*, MDL No. 1840.

Dated this _____ day of September, 2007.

Hon. W. Keith Watkins